

THIRTEENTH JUDICIAL DISTRICT  
STATE OF MONTANA

FILED  
ORIGINAL  
June 26 2008

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

AF-08-0203



INGRID G. GUSTAFSON  
RUSSELL C. FAGG  
SUSAN P. WATTERS  
P.O. BOX 35029  
BILLINGS, MT

JUNE 25, 2008

MT Supreme Court  
c/o Mr. Ed Smith  
P.O. Box 203003  
Helena, T 59620-3003

FILED

JUN 26 2008

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

RE: Comments to the Proposed 2008 Montana Code of Judicial Conduct

Dear Montana Supreme Court:

We write this letter in comment to the Proposed 2008 Montana Code of Judicial Conduct.

We have objection to adopting various provisions of the Proposed 2008 Montana Code of Judicial Conduct. Those objections are to the following:

1. Rule 3.9 precludes a judge from acting as an arbiter or mediator apart from the judge's official duties. While judges should not moonlight as arbiters or mediators, there are times when a judge is called upon in his/her personal life to serve in that capacity to assist neighbors, relatives or friends resolve problems.
2. Rule 3.13 (b)(6) limits a judges acceptance of a scholarship, fellowship or similar benefits or award only "if they are available to similarly situated persons who are not judges, based upon the same terms and criteria." Under this preclusion a judge would not be able to accept a scholarship to attend a judicial course at the National Judicial College or other judicial education provider as such scholarships are not available for individuals who are not judges.
3. Rule 4.1 (A)(2), (3), (4), (5) and (7) impose overly broad restrictions on judges in the area of political and campaign activities. This Rule is far reaching and appears to strip judges of their constitutionally protected rights of free speech and association.  
4.1(A)(2) – precludes a judge from making a speech on behalf of a non-judicial office-holder or candidate but does not preclude such for a judicial office-holder or candidate. Comments [4] states, "judges are in the unique position to know and share with interested persons the qualifications of judicial candidates." A judge may be in the unique position to know and share with interested persons qualifications of non-judicial office-holders and candidates as well. For instance,

a judge may be in a unique position to know and share with interested persons the qualities of a Clerk of Court candidate, or a relative, friend, or past law partner seeking a particular elected position. A judge should not be required to give up his/her rights of free speech merely because he/she became a judge.

4.1(A)(3) – precludes a judge from publicly endorsing or opposing a non-judicial office-holder or candidate. Again, why should a judge give up his/her right to free speech merely because he/she has become a judge. How far does this preclusion extend? What if a family member residing in the judge's same household puts up a yard sign or attaches a bumper sticker to a family car? What if a judge is in a unique position to know and share with interested persons qualifications of non-judicial office-holders and candidates?

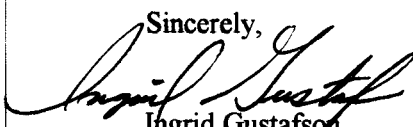
4.1 (A)(4) – precludes a judge from making a contribution to a political organization, office-holder or candidate for non-judicial office. The comments set forth above are equally applicable to this section.


4.1 (A)(5) – precludes a judge not only from purchasing a ticket to a partisan sponsored event but from attending such an event. A judge should be permitted to attend partisan campaign rallies if nothing more than for his/her own education and information gathering to assist the judge in becoming an informed member of the voting public. Additionally, if a judge is running for office, speaking at events sponsored by a partisan organization may be an effective means of reaching voters. Again, the comments set forth above are equally applicable to this section.

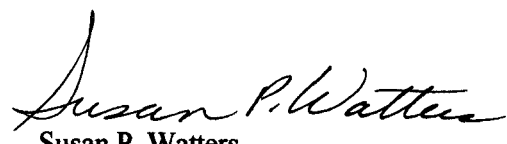
4.1 (A)(7) – precludes a judge from using an endorsement from a political organization or non-judicial office-holder or candidate. Will a judge be required to reject any such endorsement as failure to do so would result in "using" the endorsement?

While we support the Supreme Court's desire to update our Code of Judicial Conduct, we do not support a "one size fits all" approach and request the Court to delete or amend the above provisions. Thank you.

Sincerely,

  
Ingrid Gustafson  
District Court Judge

  
Russell C. Fagg  
District Court Judge

  
Susan P. Watters  
District Court Judge